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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/890,577	08/02/2001	Jean-Pascal Delay	Q65609	4707

7590 03/23/2005

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EXAMINER

FOREMAN, JONATHAN M

ART UNIT PAPER NUMBER

3736

DATE MAILED: 03/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

8W

Office Action Summary

Application No.

09/890,577

Applicant(s)

DELAY, JEAN-PASCAL

Examiner

Jonathan ML Foreman

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 December 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 6 is/are rejected.
- 7) ☒ Claim(s) 5 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>20050111</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Information Disclosure Statement

1. The information disclosure statement filed 1/11/05 fails to comply with 37 CFR 1.97(c) because it lacks a statement as specified in 37 CFR 1.97(e) or the fee set forth in 37 CFR 1.17(p) (MPEP 609 [R – 2]). It has been placed in the application file, but the information referred to therein has not been considered.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1 – 4 and 6 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,030,349 to Wilson et al.

In regards to claims 1 - 4 and 6, Wilson et al. discloses a device for manual control of a surgical guide (Col. 2, lines 6 – 9) having a body (32) with a conduit (34; Col. 4, lines 5 – 11), a member (20) for axially immobilizing the guide having a conduit that is displaceable between a position in which it immobilizes the guide and in which the conduits formed in the body and the immobilizing member are not aligned, and a position in which it releases the guide and in which the conduits formed in the body and the immobilizing member are aligned (Col. 5, lines 52 – 60), the device has a means for elastic return (18) of the immobilizing member to its immobilizing position (Col. 7, lines 7 – 24). The immobilizing member is considered by the Examiner to be integral in one

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piece with the body in the two together form a single unit. The body comprises a seat (36) for receiving the immobilizing member in the immobilizing position (Col. 5, lines 19 – 20). The seat forms an interruption of the conduit. Two spans are on each side of the seat for transverse support of the guide (Col. 6, lines 30 – 41). At rest, the immobilizing member is outside the seat (Col. 7, lines 19 – 22). Wilson et al. discloses an arm (18, Figure 5a) bearing the immobilizing member moveable relative to the body (Col. 5, line 66 – Col. 6, line 1).

Response to Arguments

4. Applicant's arguments filed 12/29/04 have been fully considered but they are not persuasive. Applicant asserts that Wilson et al. fails to disclose or even suggest an immobilizing member that is integral in one piece with the body. However the Examiner disagrees. Merriam-Webster's Collegiate Dictionary 10th ed. defines "integral" as being "formed as a unit with another part". In the present case, the immobilizing member (20) and the body (32) as disclosed by Wilson et al. are disclosed as forming a unit (Figure 7). The immobilizing member (20) and the body (32) form one piece (Figure 7).

Allowable Subject Matter

5. Claim 5 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. Patent No. 4,429,852 to Tersteegen et al. and U.S. Patent No. 4,716,757 to McGregor et al.

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7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

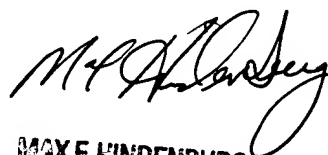
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jonathan ML Foreman whose telephone number is (571)272-4724. The examiner can normally be reached on Monday - Friday 8:00 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on (571)272-4726.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


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